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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

IMM PUBLICATIONS, INC. *et al.*,

Plaintiff,

Civil No. 09-937-PK

v.

O R D E R

LAMAR OBIE CORPORATION,

Defendant.

HAGGERTY, District Judge:

Magistrate Judge Papak issued a Findings and Recommendation [37] in this action. The Magistrate Judge recommended denying plaintiffs' Motion to Amend [12] and granting defendant's Motion for Summary Judgment [16].

Plaintiffs object [39] to portions of the Findings and Recommendation. When a party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate's report. 28 U.S.C. § 636(b)(1)(B); *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

The court has given the file of this case a *de novo* review, and has also carefully evaluated the Magistrate Judge's Findings and Recommendations, plaintiffs' objections, and the record of the case. The Findings and Recommendation is well-reasoned, without error, and is adopted in its entirety. The objections are addressed briefly.

ANALYSIS

The Magistrate Judge provided a thorough recitation of the relevant facts previously, and these facts need only be summarized here. He concluded that there is no genuine issue of material fact presented and that defendant is entitled to judgment as a matter of law on plaintiffs' claim for false light. The false light claim is based on a statement contained in a bid that defendant submitted to TriMet in response to a request for proposals (RFP) concerning the right to sell transit advertising. Complaint, ¶ 46. The RFP required each bidder to describe how it could provide partnership or joint venturing opportunities to minority businesses within the context of the transit advertising contract. Declaration of Edwin C. Perry in Support of Defendant's Motion for Summary Judgment, Exhibit 2 at 7. Defendant and plaintiffs discussed partnering on advertising sales if defendant won the contract, and defendant referenced plaintiffs and two other minority newspaper organizations in its bid. Defendant submitted its bid in April 2006 under seal, and won the bid later that year. The Findings and Recommendation concluded that "plaintiffs' false light claim fails because they cannot meet the publication element of the claim, and/or because the claim is barred by the statute of limitations." Findings and Recommendation at 7. The Magistrate Judge reasoned that plaintiffs failed to establish that the proposal at issue reached a large number of people because "no evidence suggests that anyone other than four or five TriMet employees ever saw the proposal." Findings and Recommendation at 8. The Magistrate Judge rejected plaintiffs' alternative "public document" argument because TriMet requested the bids to be sealed. *Id.*

Finally, the Magistrate Judge concluded that the false light claim was also barred by the statute of limitations imposed under Oregon law. This court adopts the Findings and Recommendation in its entirety.

Plaintiffs' objections regarding the analysis regarding publicity are without merit. The Magistrate Judge correctly concluded that plaintiffs failed to show that the proposal at issue reached the requisite audience for a false light claim. Plaintiffs' efforts to present case authorities from outside of Oregon and to assert that the parties' relationship could create an exception to the publicity requirements are unpersuasive. Similarly, the possible availability of the proposal to public inspection – without evidence of actual publicity – is insufficient to overcome the Findings and Recommendation's well-reasoned conclusion that summary judgment is warranted here.

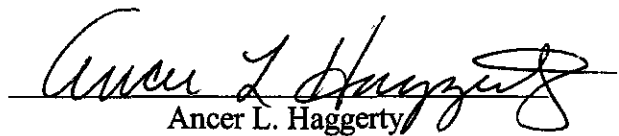
Plaintiffs' arguments seeking to evade the applicable statute of limitations are even less persuasive. At best, as the Magistrate Judge noted, the proposal could be construed as a public document in late 2006 when it was selected as the successful bid. Plaintiffs' false light claim in 2009, therefore, is unavoidably time-barred. Plaintiffs' remaining arguments have been considered and are found to be without merit.

CONCLUSION

The Magistrate Judge's Findings and Recommendation [37] in this action is adopted. Plaintiffs' objections [39] are overruled. Plaintiffs' Motion to Amend [12] is denied as moot and defendant's Motion for Summary Judgment [16] is granted. This case is dismissed with prejudice, and any other pending motions are denied as moot.

IT IS SO ORDERED.

Dated this 6 day of May, 2010.


Ancer L. Haggerty
United States District Judge